

State of Wisconsin



2011 Assembly Bill 69

Date of enactment: **December 7, 2011**
Date of publication*: **December 20, 2011**

2011 WISCONSIN ACT 94

AN ACT *to create* 895.62 and 939.48 (1m) of the statutes; **relating to:** self-defense.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 895.62 of the statutes is created to read:

895.62 Use of force in response to unlawful and forcible entry into a dwelling, motor vehicle, or place of business; civil liability immunity. (1) In this section:

(a) "Actor" means a person who uses force that is intended or likely to cause death or great bodily harm to another person.

(b) "Dwelling" has the meaning given in s. 895.07 (1) (h).

(c) "Place of business" means a business that the actor owns or operates.

(2) Except as provided in sub. (4), an actor is immune from civil liability arising out of his or her use of force that is intended or likely to cause death or great bodily harm if the actor reasonably believed that the force was necessary to prevent imminent death or bodily harm to himself or herself or to another person and either of the following applies:

(a) The person against whom the force was used was in the process of unlawfully and forcibly entering the actor's dwelling, motor vehicle, or place of business, the actor was on his or her property or present in the dwelling, motor vehicle, or place of business, and the actor knew or had reason to believe that an unlawful and forcible entry was occurring.

(b) The person against whom the force was used was in the actor's dwelling, motor vehicle, or place of business after unlawfully and forcibly entering it, the actor was present in the dwelling, motor vehicle, or place of business, and the actor knew or had reason to believe that the person had unlawfully and forcibly entered the dwelling, motor vehicle, or place of business.

(3) If sub. (2) (a) or (b) applies, the finder of fact may not consider whether the actor had an opportunity to flee or retreat before he or she used force and the actor is presumed to have reasonably believed that the force was necessary to prevent imminent death or bodily harm to himself or herself or to another person.

(4) The presumption described in sub. (3) does not apply if any of the following are true:

(a) The actor was engaged in a criminal activity or was using his or her dwelling, motor vehicle, or place of business to further a criminal activity at the time he or she used the force described in sub. (2).

(b) The person against whom the force was used was a public safety worker, as defined in s. 941.375 (1) (b), who entered or attempted to enter the actor's dwelling, motor vehicle, or place of business in the performance of his or her official duties. This paragraph applies only if at least one of the following applies:

1. The public safety worker identified himself or herself to the actor before the force described in sub. (2) was used by the actor.

* Section 991.11, WISCONSIN STATUTES 2009-10 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

2. The actor knew or reasonably should have known that the person entering or attempting to enter his or her dwelling, motor vehicle, or place of business was a public safety worker.

(5) In any civil action, if a court finds that a person is immune from civil liability under sub. (2), the court shall award the person reasonable attorney fees, costs, compensation for loss of income, and other costs of the litigation reasonably incurred by the person.

(6) Nothing in this section may be construed to limit or impair any defense to civil or criminal liability otherwise available.

SECTION 2. 939.48 (1m) of the statutes is created to read:

939.48 (1m) (a) In this subsection:

1. "Dwelling" has the meaning given in s. 895.07 (1) (h).

2. "Place of business" means a business that the actor owns or operates.

(ar) If an actor intentionally used force that was intended or likely to cause death or great bodily harm, the court may not consider whether the actor had an opportunity to flee or retreat before he or she used force and shall presume that the actor reasonably believed that the force was necessary to prevent imminent death or great bodily harm to himself or herself if the actor makes such a claim under sub. (1) and either of the following applies:

1. The person against whom the force was used was in the process of unlawfully and forcibly entering the actor's dwelling, motor vehicle, or place of business, the actor was present in the dwelling, motor vehicle, or place

of business, and the actor knew or reasonably believed that an unlawful and forcible entry was occurring.

2. The person against whom the force was used was in the actor's dwelling, motor vehicle, or place of business after unlawfully and forcibly entering it, the actor was present in the dwelling, motor vehicle, or place of business, and the actor knew or reasonably believed that the person had unlawfully and forcibly entered the dwelling, motor vehicle, or place of business.

(b) The presumption described in par. (ar) does not apply if any of the following applies:

1. The actor was engaged in a criminal activity or was using his or her dwelling, motor vehicle, or place of business to further a criminal activity at the time.

2. The person against whom the force was used was a public safety worker, as defined in s. 941.375 (1) (b), who entered or attempted to enter the actor's dwelling, motor vehicle, or place of business in the performance of his or her official duties. This subdivision applies only if at least one of the following applies:

a. The public safety worker identified himself or herself to the actor before the force described in par. (ar) was used by the actor.

b. The actor knew or reasonably should have known that the person entering or attempting to enter his or her dwelling, motor vehicle, or place of business was a public safety worker.

SECTION 3. Initial applicability.

(1) This act first applies to a use of force that occurs on the effective date of this subsection.



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-0392/1
PJH:jld:rs

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March 30, 2011 - Introduced by Representatives KAUFERT, MURSAU, JACQUE, LEMAHIEU, ZIEGELBAUER, NASS, KERKMAN, WILLIAMS, SPANBAUER, PETRYK, KNODL, PETROWSKI, KESTELL, STEINEKE, AUGUST, LITJENS, A. OTT, DANOU, TAUCHEN, KRUG, STRACHOTA, RIPP, HONADEL, FARROW and THIESFELDT, cosponsored by Senators WANGGAARD, LEIBHAM, HOLPERIN, LAZICH, COWLES, OLSEN, VUKMIR, GROTHMAN, HANSEN, GALLOWAY, DARLING, HARSDDORF, HOPPER, TAYLOR and MOULTON. Referred to Committee on Judiciary and Ethics.

- 1 **AN ACT** *to create* 895.62 and 939.48 (1m) of the statutes; **relating to:** the
2 privilege of self-defense.

Analysis by the Legislative Reference Bureau

In general, a person who uses force in self-defense or in the defense of another person may not be convicted of a crime stemming from that use of force. This law applies only when: 1) the amount of force used is reasonable; and 2) the person uses that force to prevent or stop what he or she reasonably believes is an unlawful interference with himself or herself or another person, such as the crime of battery. Current law specifies that a person may use force that is intended or likely to cause the death of or great bodily harm to another individual only if the person reasonably believes that using such force is necessary to prevent the imminent death of or great bodily harm to himself or herself or another person.

Under this bill, if a person used defensive force that was intended or likely to cause death or great bodily harm, the court must presume that the person reasonably believed that the force was necessary to prevent death or great bodily harm to himself or herself or to another person if: 1) the individual against whom the force was used was in the process of unlawfully and forcibly entering, or had already unlawfully and forcefully entered, the residence of the person who used the force; 2) the person was present in that residence; and 3) the person knew or reasonably believed that an unlawful and forcible entry was occurring or had occurred. This presumption, however, does not apply if: 1) the person who used the force was engaged in a criminal activity or was using his or her residence to further a criminal activity; or 2) the individual against whom the force was used had identified himself or herself as a

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peace officer (or was or should have been known to be a peace officer) and was entering the residence in the performance of his or her official duties.

Under the bill, a person who uses force that is intended or likely to cause death or great bodily harm is immune from civil liability if the person reasonably believed that the force was necessary to prevent death or great bodily harm to himself or herself or to another person and if: 1) the individual against whom the force was used was in the process of unlawfully and forcibly entering, or had already forcibly entered, the residence of the person who used the force; 2) the person who used the force was present in the residence; and 3) the person who used the force knew or had reason to believe that an unlawful and forcible entry was occurring or had occurred. Under the bill for purposes of civil immunity, a person is not presumed to have reasonably believed that the force was necessary if: 1) the person who used the force was engaged in a criminal activity or was using his or her residence to further a criminal activity; or 2) the individual against whom the force was used had identified himself or herself as a peace officer (or was or should have been known to be a peace officer) and was entering the residence in the performance of his or her official duties.

Under the bill, if a court finds that person who is sued in civil court is immune from liability, the person is entitled to attorney fees, court costs, compensation for income loss, and other expenses the person incurred to defend himself or herself against the civil action.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 895.62 of the statutes is created to read:

2 **895.62 Use of force in response to unlawful and forcible entry into a**
3 **residence; civil liability immunity. (1)** In this section, "actor" means a person
4 who uses force that is intended or likely cause death or great bodily harm to another
5 person.

6 **(2)** Except as provided in sub. (4), an actor is immune from civil liability arising
7 out of his or her use of force that is intended or likely to cause death or great bodily
8 harm if the actor reasonably believed that the force was necessary to prevent
9 imminent death or great bodily harm to himself or herself or to another person and
10 either of the following applies:

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1 (a) The person against whom the force was used was in the process of
2 unlawfully and forcibly entering the actor's residence, the actor was present in the
3 residence, and the actor knew or had reason to believe that an unlawful and forcible
4 entry was occurring.

5 (b) The person against whom the force was used was in the actor's residence
6 after unlawfully and forcibly entering it, the actor was present in the residence, and
7 the actor knew or had reason to believe that the person had unlawfully and forcibly
8 entered the residence.

9 **(3)** An actor is presumed to have reasonably believed that the force was
10 necessary to prevent imminent death or great bodily harm to himself or herself or
11 to another person if either sub. (2) (a) or (b) applies.

12 **(4)** The presumption described in sub. (3) does not apply if any of the following
13 are true:

14 (a) The actor was engaged in a criminal activity or was using his or her
15 residence to further a criminal activity at the time he or she used the force described
16 in sub. (2).

17 (b) The person against whom the force was used was a peace officer who entered
18 or attempted to enter the actor's residence in the performance of his or her official
19 duties. This paragraph applies only if at least one of the following applies:

20 1. The officer identified himself or herself to the actor before the force described
21 in sub. (2) was used by the actor.

22 2. The actor knew or reasonably should have known that the person entering
23 or attempting to enter his or her residence was a peace officer.

24 **(5)** In any civil action, if a court finds that a person is immune from civil liability
25 under sub. (2), the court shall award the person reasonable attorney fees, costs,

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1 compensation for loss of income, and other costs of the litigation reasonably incurred
2 by the person.

3 **SECTION 2.** 939.48 (1m) of the statutes is created to read:

4 939.48 **(1m)** (a) If an actor intentionally used force that was intended or likely
5 to cause death or great bodily harm, the court shall presume that the actor
6 reasonably believed that the force was necessary to prevent imminent death or great
7 bodily harm to himself or herself if the actor makes such a claim under sub. (1) and
8 any of the following applies:

9 1. The person against whom the force was used was in the process of unlawfully
10 and forcibly entering the actor's residence, the actor was present in the residence,
11 and the actor knew or reasonably believed that an unlawful and forcible entry was
12 occurring.

13 2. The person against whom the force was used was in the actor's residence
14 after unlawfully and forcibly entering it, the actor was present in the residence, and
15 the actor knew or reasonably believed that the person had unlawfully and forcibly
16 entered the residence.

17 (b) The presumption described in par. (a) does not apply if any of the following
18 applies:

19 1. The actor was engaged in a criminal activity or was using his or her residence
20 to further a criminal activity at the time.

21 2. The person against whom the force was used was a peace officer who entered
22 or attempted to enter the actor's residence in the performance of his or her official
23 duties. This subdivision applies only if at least one of the following applies:

24 a. The officer identified himself or herself to the actor before the force described
25 in par. (a) was used by the actor.

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b. The actor knew or reasonably should have known that the person entering
or attempting to enter his or her residence was a peace officer.

3 SECTION 3. Initial applicability.

4 (1) This act first applies to a use of force that occurs on the effective date of this
5 subsection.

6 (END)

Committee Substitute for
Committee Substitute for Senate Bill No. 436

An act relating to the protection of persons and property; creating s. 776.013, F.S.; authorizing a person to use force, including deadly force, against an intruder or attacker in a dwelling, residence, or vehicle under specified circumstances; creating a presumption that a reasonable fear of death or great bodily harm exists under certain circumstances; creating a presumption that a person acts with the intent to use force or violence under specified circumstances; providing definitions; amending ss. 776.012 and 776.031, F.S.; providing that a person is justified in using deadly force under certain circumstances; declaring that a person has no duty to retreat and has the right to stand his or her ground and meet force with force if the person is in a place where he or she has a right to be and the force is necessary to prevent death, great bodily harm, or the commission of a forcible felony; creating s. 776.032, F.S.; providing immunity from criminal prosecution or civil action for using deadly force; defining the term “criminal prosecution”; authorizing a law enforcement agency to investigate the use of deadly force but prohibiting the agency from arresting the person unless the agency determines that there is probable cause that the force the person used was unlawful; providing for the award of attorney’s fees, court costs, compensation for loss of income, and other expenses to a defendant in a civil suit who was immune from prosecution under this section; providing an effective date.

WHEREAS, the Legislature finds that it is proper for law-abiding people to protect themselves, their families, and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others, and

WHEREAS, the castle doctrine is a common-law doctrine of ancient origins which declares that a person’s home is his or her castle, and

WHEREAS, Section 8 of Article I of the State Constitution guarantees the right of the people to bear arms in defense of themselves, and

WHEREAS, the persons residing in or visiting this state have a right to expect to remain unmolested within their homes or vehicles, and

WHEREAS, no person or victim of crime should be required to surrender his or her personal safety to a criminal, nor should a person or victim be required to needlessly retreat in the face of intrusion or attack, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 776.013, Florida Statutes, is created to read:

776.013 Home protection; use of deadly force; presumption of fear of death or great bodily harm.—

(1) A person is presumed to have held a reasonable fear of imminent peril of death or great bodily harm to himself or herself or another when using defensive force that is intended or likely to cause death or great bodily harm to another if:

(a) The person against whom the defensive force was used was in the process of unlawfully and forcefully entering, or had unlawfully and forcibly entered, a dwelling, residence, or occupied vehicle, or if that person had removed or was attempting to remove another against that person's will from the dwelling, residence, or occupied vehicle; and

(b) The person who uses defensive force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.

(2) The presumption set forth in subsection (1) does not apply if:

(a) The person against whom the defensive force is used has the right to be in or is a lawful resident of the dwelling, residence, or vehicle, such as an owner, lessee, or titleholder, and there is not an injunction for protection from domestic violence or a written pretrial supervision order of no contact against that person; or

(b) The person or persons sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the person against whom the defensive force is used; or

(c) The person who uses defensive force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity; or

(d) The person against whom the defensive force is used is a law enforcement officer, as defined in s. 943.10(14), who enters or attempts to enter a dwelling, residence, or vehicle in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person entering or attempting to enter was a law enforcement officer.

(3) A person who is not engaged in an unlawful activity and who is attacked in any other place where he or she has a right to be has no duty to retreat and has the right to stand his or her ground and meet force with force, including deadly force if he or she reasonably believes it is necessary to do so to prevent death or great bodily harm to himself or herself or another or to prevent the commission of a forcible felony.

(4) A person who unlawfully and by force enters or attempts to enter a person's dwelling, residence, or occupied vehicle is presumed to be doing so with the intent to commit an unlawful act involving force or violence.

(5) As used in this section, the term:

(a) “Dwelling” means a building or conveyance of any kind, including any attached porch, whether the building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it, including a tent, and is designed to be occupied by people lodging therein at night.

(b) “Residence” means a dwelling in which a person resides either temporarily or permanently or is visiting as an invited guest.

(c) “Vehicle” means a conveyance of any kind, whether or not motorized, which is designed to transport people or property.

Section 2. Section 776.012, Florida Statutes, is amended to read:

776.012 Use of force in defense of person.—A person is justified in using ~~the use of force~~, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against ~~the such~~ other’s imminent use of unlawful force. However, ~~a the~~ person is justified in the use of deadly force and does not have a duty to retreat only if:

(a) He or she reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony; or-

(b) Under those circumstances permitted pursuant to s. 776.013.

Section 3. Section 776.031, Florida Statutes, is amended to read:

776.031 Use of force in defense of others.—A person is justified in the use of force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate ~~the such~~ other’s trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect. However, the person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony. A person does not have a duty to retreat if the person is in a place where he or she has a right to be.

Section 4. Section 776.032, Florida Statutes, is created to read:

776.032 Immunity from criminal prosecution and civil action for justifiable use of force.—

(1) A person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer, as defined in s. 943.10(14), who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person

was a law enforcement officer. As used in this subsection, the term “criminal prosecution” includes arresting, detaining in custody, and charging or prosecuting the defendant.

(2) A law enforcement agency may use standard procedures for investigating the use of force as described in subsection (1), but the agency may not arrest the person for using force unless it determines that there is probable cause that the force that was used was unlawful.

(3) The court shall award reasonable attorney’s fees, court costs, compensation for loss of income, and all expenses incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from prosecution as provided in subsection (1).

Section 5. This act shall take effect October 1, 2005.

Approved by the Governor April 26, 2005.

Filed in Office Secretary of State April 26, 2005.